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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/590,154

06/07/2007

Horst Willner

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FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

EXAMINER

KIM, SANG K

ART UNIT

PAPER NUMBER

3654

MAIL DATE

DELIVERY MODE

03/21/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/590,154	WILLNER ET AL.	
	Examiner	Art Unit	
	SANG KIM	3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE 3/2/11.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-16 and 18-23 is/are rejected.
- 7) ☒ Claim(s) 2 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/2/11 has been entered.

Claim Objections

Claims 1-23 are objected to because of the following informalities:

In claim 1, line 1, "Process" should be --A process--;

In claims 2-8, line 1, "Process" should be --The process--;

In claim 9, line 1, "Device" should be --A device--;

In claims 10-15, "Device" should be --The device--;

In claim 16, line 1, "Process" should be --A process--;

In claims 17-23, line 1, "Process" should be --The process--;

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 8-9, 11, 13-16, 18-20 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 1369516 A1.

EP '516 teaches a method of using the apparatus, as shown in figures 1-8 and the specification. EP '516 discloses a device (abstract) for winding knitted nets 16 produced from thrums 20 and wefts 18 to a given width at a winding point (i.e., needles) in which spacer elements (24, 26, i.e., round pieces shaped in form as ribs) are arranged ahead of the winding point along which the thrums of the knitted net are guided, paragraph [0016] (i.e., the knitted netting leaves the corrugated trick plate), see figures 1-8 and the specification.

It has been held that the recitation that an element "can be" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-7, 10, 12 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1369516 A1, in view of Kohl, U.S. Patent No. 3646782.

EP '516 discloses the claimed invention except for moving the spacer or rotating the spacer.

Kohl '782 discloses the concept of moving the spacers 3 connected by a common electric motor which rotates the shaft.

EP '516 recognizes that other modifications may be used to adjust the width of net.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of EP '516 by providing the movement of spacers as taught by Kohl '782, and use any old and well known shaped (e.g. rotation of the rod) for movement of the spacer as another way of oscillating the spacer.

Allowable Subject Matter

Claims 2 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Claims 16-23 have been added.

Applicant's arguments filed on 3/2/11 have been fully considered but they are not persuasive with respect to claims 1 and 3-15.

Applicant argues that the distance between the grooves between the corrugations corresponds to the distance of the needles knitting the thrums and the

grooves are parallel to each other, thus it is not possible to alter the winding width by using the corrugated plate as described in EP '516.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., claims 1 and 9 to alter the winding width by the spacer elements. However, claims 1 and 9 do not recite any altering or reducing the winding width of the net by the spacer elements.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SANG KIM whose telephone number is 571-272-6947. The examiner can normally be reached Monday through Thursday from 9:00 A.M. to 5:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen, can be reached on (571) 272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SK

3/14/11

/SANG KIM/

Primary Examiner, Art Unit 3654